UNITED
NATIONS

HRI

International Human Rights Instruments

Distr.
GENERAL

HRI/CORE/1/Add.5
3 June 1992

Original: ENGLISH

CORE DOCUMENT FORMING PART OF THE REPORTS
OF STATES PARTIES

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[20 January 1992]

I. LAND AND PEOPLE

1. Background statistical information, using the most up-to-date figures available, on the United Kingdom, is as follows:

Per capita income	US$ 14,570 (OECD)
Gross national product	US$ 834,166 (OECD)
Rate of inflation	9.5 per cent (1989/90)
External debt	Net public sector debt £150.6 billion (1990)
Rate of unemployment	Males 7.6 per cent Females 3.5 per cent (1990)
Literacy rate	Note available - assumed to be approximately 100 per cent
Percentage of population speaking mother tongue	Not available - assumed to be approximately 100 per cent

GE.92-15920/4588B

Life expectancy	Males 73.2 years Females 78.8 (1991)
Infant mortality rate	Males 8.9 per 100,000 Females 6.8 per 100,000 (1990)
Maternal mortality rate	Males and females combined 6.5 per 100,000 (1986-1988)
Fertility rate	Total period fertility rate 1.81 (1989)
Percentage of population under 15 and over 65 years of age	Males under 15 - 10.5 per cent Females under 15 - 9.9 per cent Males over 65 - 6.3 per cent Females over 65 - 9.4 per cent (1990)
Percentage of population in rural areas and in urban areas	Rural 10.4 per cent Urban 89.6 per cent (data from 1981 census for Great Britain only)
Percentage of households headed by women	27 per cent (1990)

II. GENERAL POLITICAL STRUCTURE

A. System of Government

2. The system of parliamentary Government in the United Kingdom is not based on a written constitution, but is the result of a gradual evolution spanning several centuries. The essence of the system today, as it has been for more than two centuries, is that the political leaders of the executive are members of the legislature and are responsible to an elected assembly, the House of Commons, comprising members from constituencies in England, Scotland, Wales and Northern Ireland. The Government's tenure of office depends on the support of a majority in the House of Commons, where it has to meet informed and public criticism by an Opposition capable of succeeding it as a Government should the electorate so decide.

The powers of Parliament

3. Parliament is the supreme legislative authority in Britain. Its three elements - the Queen and the two Houses of Parliament (the House of Lords and the elected House of Commons) - are outwardly separate. They are consituted on different principles and they meet together only on occasions of symbolic significance such as a coronation, or the State opening of Parliament when the Commons are summoned by the Queen to the House of Lords. As a law-making organ of State, however, Parliament is a corporate body and with certain exceptions (see below) cannot legislate without the concurrence of all its parts.

4. Parliament can legislate for Britain as a whole, for any of the constituent parts of the country separately, or for any combination of them. It can also legislate for the Channel Islands and the Isle of Man, which are Crown dependencies and not part of Britain, having subordinate legislatures which legislate on island affairs. The legislatures of the Channel Islands (the States of Jersey and the States of Guernsey) and the Isle of Man (the Tynwald Court) consist of the Queen, the Privy Council and the local assemblies. It is the duty of the Home Secretary, as the member of the Privy Council primarily concerned with island affairs, to scrutinize each legislative measure before it is submitted to the Queen in Council.

5. The Parliament Act 1911 fixed the life of a Parliament at five years (although it may be dissolved and a general election held before the expiry of the legal term). Because it is not subject to the type of legal restraints imposed on the legislatures of countries with formal written constitutions, Parlaiment is virtually free to legislate as it pleases: generally to make, unmake, or alter any law; to legalize past illegalities and to make void and punishable what was lawful when done and thus reverse the decisions of the ordinary courts; and to destroy established conventions or turn a convention into binding law.

6. In practice, however, Parliament does not assert its supremacy in this way. Its members bear in mind the common law which has grown up over the centuries, and have tended to act in accordance with precedent and tradition. Moreover, both Houses are sensitive to public opinion, and, although the validity of an Act of Parliament that has been duly passed, legally promulgated and published by the proper authority cannot be disputed in the law courts, no Parliament would be likely to pass an Act which it knew would receive no public support. The system of party Government in Britain helps to ensure that Parliament legislates with its responsibility to the electorate in mind.

The Crown and Parliament

7. Constitutionally the legal existence of Parliament depends upon the exercise of the royal prerogative (broadly speaking, the collection of residual powers left in the hands of the Crown). However, the powers of the Crown in connection with Parliament are subject to limitation and change by legislative process and are always exercised through and on the advice of ministers responsible to Parliament.

8. As the temporal "governor" of the established Church of England, the Queen, on the advice of the Prime Minister, appoints the archbishops and bishops, some of whom, as "lords spiritual" form part of the House of Lords. As the "fountain of honour" she confers peerages (on the recommendation of the Prime Minister who usually seeks the views of others); thus the "lords temporal" who form the remainder of the upper House have likewise been created by royal prerogative, and their numbers may be increased at any time.

9. Parliament is summoned by royal proclamation and is prorogued (discontinued until the next session) and dissolved by the Queen. At the beginning of each new session the Queen drives in state to the House of Lords and opens Parliament in person. (In special circumstances, this may be done

by royal commissioners acting on her behalf.) At the opening ceremony the Queen addresses the assembled Lords and Commons; the Queen's speech is drafted by her ministers and outlines the Government's broad policies and proposed legislative programme for the session.

10. The Sovereign's assent is required before any legislation can take effect - Royal Assent to bills is now usually declared to Parliament by the Speakers of the two Houses. The Sovereign has the right to be consulted, the right to encourage and the right to warn, but the right to veto has long since fallen into disuse.

Parliamentary sessions

11. The life of a Parliament is divided into sessions. Each session usually lasts for one year and is usually terminated by prorogation, although it may be terminated by dissolution. During a session either House may adjourn itself, on its own motion, to whichever date it pleases.

12. Prorogation at the close of a session is usually effected by an announcement on behalf of the Queen made in the House of Lords to both Houses and operates until a fixed date. The date appointed may be deferred or brought forward by subsequent proclamation. The effect of a prorogation is at once to terminate nearly all parliamentary business. This means that all public bills not completed in the session lapse, and have to be reintroduced in the next session unless they are to be abandoned.

13. Parliament is usually dissolved by proclamation either at the end of its five-year term or when a government requests a dissolution before the terminal date. In modern practice, the unbroken continuity of Parliament is assured by the fact that the same proclamation which dissolves the existing Parliament orders the issue of writs for the election of a new one and announces the date on which the new Parliament is to meet. Should the Sovereign die after a dissolution, but before the general election, the election and the meeting of the new Parliament would be postponed for 14 days.

14. An adjournment does not affect uncompleted business. The reassembly of Parliament can be accelerated (if the adjcurnment was intended to last for more than 14 days) by royal proclamation, or at short notice, if the public interest demands it, by powers specially conferred by each House on its Speaker.

Northern Ireland

15. Between 1921 and 1972 Northern Ireland had its own Parliament and Government, subordinate to the Parliament at Westminster, but in 1972, following several years of sectarian violence and terrorism, the Northern Ireland Government resigned and direct rule by the United Kingdom Parliament was introduced with executive powers under the control of a Secretary of State for Northern Ireland, a cabinet minister who was given responsibility for functions previously exercised by the Northern Ireland Government and for the Northern Ireland departments. Under the Northern Ireland Act 1974, most legislation formerly carried out by Act of the Northern Ireland Parliament is now considered by the Westminster Parliament in the form of draft statutory instruments.

The European Community

16. Since Britain acceded to the European Community in 1973 the provisions of the European Communities Act 1972 applying the Treaty of Rome have come into force. These provide for various types of Community legislation, including regulations which are legally binding and directly applicable in all member countries, and directives, also made by the Community (whose Council of Ministers comprises representatives of the Government of each member State). These directives are binding as regards the result to be achieved upon each member State to which they are addressed, but allow the national Parliaments to choose the form and method of implementation. Special parliamentary procedures have been adopted to keep members of both Houses of the British Parliament informed about Community developments.

17. Britain, like the other member countries of the Community, sends a number of representatives to sit in the European Parliament. The Parliament exercises control over Community institutions by scrutinizing legislation, by questioning both the Commission and the Council of Ministers and by debating all major policy issues of the Community.

The composition of Parliament

18. The two-chamber system is an integral part of British parliamentary govenment. The House of Lords (the upper House) and the House of Commons (the lower House) sit separately and are constituted on entirely different principles, but the process of legislation involves both Houses.

19. Since the beginning of Parliament, the balance of power between the two Houses has undergone a complete change. The continuous process of development and adaptation has been greatly accelerated during the past 75 years or so. In modern practice the centre of parliamentary power is in the popularly elected House of Commons, but until the twentieth century the Lords' power of veto over measures proposed by the Commons was, theoretically, unlimited. Under the Parliament Acts 1911 and 1949 certain bills may become law without the consent of the Lords. The 1911 Act imposed restrictions on the Lords' right to delay bills dealing exclusively with expenditure or taxation and limited their power to reject other legislation. Under the 1911 Act the Lords were limited to delaying bills for two years. This was reduced to one year by the 1949 Act.

20. These limitations to the powers of the House of Lords are based on the belief that the principal legislative function of the modern Hosue of Lords is revision and that its object is to complement the House of Commons and not to rival it.

House of Lords

21. The House of Lords consists of:

(a) The Lords Spiritual: the Archbishops of Canterbury and York, the Bishops of London, Durham and Winchester, and the 21 next most senior diocesan bishops of the Church of England;

(b) The Lords Temporal, subdivided into (i) all hereditary peers and peeresses of England, Scotland, Great Britain and the United Kingdom who have not disclaimed their peerage under the Peerage Act 1963; (ii) all life peers and peeresses created by the Crown under the Life Peerages Act 1958, and (iii) Lords of Appeal ("law lords"), created life peers under the Appellate Jurisdiction Acts 1876 and 1887 to assist the House in its judicial duties. Some law lords may already be members of the House and all remain so after their retirement.

22. Hereditary peerages carry a right to sit in the House of Lords (subject to certain statutory disqualifications), provided the holder establishes his or her claim and is 21 years or age or over, but anyone succeeding to a peerage may, within 12 months of succession, disclaim that peerage for his or her lifetime under the Peerage Act. Disclaimants lose their right to sit in the House of Lords but gain the right to vote at parliamentary elections, and to offer themselves for election to the House of Commons.

23. Temporal peerages (both hereditary and life) are conferred by the Sovereign, on the advice of the Prime Minister. They are usually granted either in recognition of distinguished service in politics or other walks of life, or because the Government of the day wishes to have the recipient in the upper House. The House of Lords also provides a place in Parliament for men and women whose advice is useful to the State, but who do not wish to be involved in party politics. Unlike the House of Commons, there is no fixed number of members in the House of Lords. Relatively few are full-time politicians.

Final Court of Appeal

24. In addition to its parliamentary work, the House of Lords has important legal functions, being the final court of appeal for civil cases in the whole of Britain, and for criminal cases in England, Wales and Northern Ireland. Theoretically, all Lords are entitled to attend the House when it is sitting as a court of appeal, but in pratice and by established tradition, judicial business is conducted by the Lord Chancellor, who sits from time to time, the Lords of Appeal in Ordinary (who are expressly appointed to hear appeals to the House, and are salaried), and - when required - other Lords who hold or have held high judicial office.

House of Commons

25. The House of Commons is a representative assembly elected by universal adult suffrage, and consists of men and women (Members of Parliament, "MPs") from all sections of the community, regardless of income or occupation. There are 650 seats in the House of Commons: 523 for England, 38 for Wales, 72 for Scotland and 17 for Northern Ireland.

26. Members of the House of Commons hold their seats during the life of a Parliament. They are elected either at a general election, which takes place after a Parliament has been dissolved and a new one summoned by the Sovereign, or at a by-election, which is held when a vacancy occurs in the House as a result of the death or resignation of an MP or as a result of elevation of a member to the House of Lords.

27. An MP who wishes to resign from the House of Commons can do so only by using the technical device of applying to the Chancellor of the Exchequer for "an office of profit under the Crown". The holding of such office is a disqualification for membership of the House of Commons, and when an MP is appointed to one of these offices, his or her seat is automatically vacated. The two appointments used for this purpose are Crown Steward or Bailiff of the Chiltern Hundreds and Steward of the Manor of Northstead, ancient offices which carry no salary and have no responsibilities. The appointment lasts only until another MP asks for it. A request for appointment is never refused.

Parliamentary elections

28. For electoral purposes, Britain is divided into geographical areas known as constituencies, each returning one member to the House of Commons. To ensure equitable representation, Boundary Commissions for England, Scotland, Wales and Northern Ireland make periodic reviews of parliamentary and European Parliament constituencies at intervals of not less than 10 and not more than 15 years, and recommend any redistribution of seats that may seem necessary in the light of population movements or other changes. A commission may also submit interim reports on particular constituencies if, for instance, it is necessary to bring constituency boundaries into line with altered local government boundaries.

29. The law relating to parliamentary elections is contained in the Represenation of the People Acts. Under their provisons election to the House of Commons is decided by secret ballot. British citizens, citizens of other Commonwealth countries and citizens of the Irish Republic resident in the United Kingdom are entitled to vote provided they are aged 18 years or over and not legally disqualified from voting. The following people are not entitled to vote in a parliamentary election: peers and peeresses in their own right, who are members of the House of Lords; aliens; patients detained under mental health legislation; convicted offenders detained in custody; and anyone convicted within the previous five years of corrupt or illegal election practices. To be eligible to vote in a particular constituency an elector must be registered in the current electoral register for that constituency. The electoral register is compiled annually by electoral registration offices in each constituency.

30. Voting is not compulsory, but at a general election the majority of the electorate (over 32.5 million people or 75.4 per cent at the general election in June 1987) exercise their right. At by-elections polling percentages may be substantially lower. As a general rule, electors vote in person at polling stations specially established for the purpose.

31. Any man or woman who is a British citizen, a citizen of another Commonwealth country or a citizen of the Irish Republic, who is not disqualified from voting and has reached the age of 21, may stand as a candidate at a parliamentary election. Those disqualified from election include undischarged bankrupts, people sentenced to more than one year's imprisonment, members of the House of Lords, clergy of the Churches of England, Scotland and Ireland and the Roman Catholic Church, and those precluded under the House of Commons Disqualification Act 1975 - for instance, holders of judicial office, civil servants, members of the regular armed

forces or the police service, or British members of the legislature of any country or territory outside the Commonwealth. Also precluded are holders of a wide range of public posts - for instance, in public corporations and government commissions. A candidate usually belongs to one of the main national political parties, although smaller parties or groupings also nominate candidates, and individuals may be nominated without party support. A candidate's nomination for election must be signed by two electors as proposer and seconder, and by eight other electors registered in the constituency.

32. The system of voting used is the simple majority system: candidates are elected if they have a majority of votes over the next candidate, although not necessarily a majority over the sum of the other candidates' vote.

33. Questions concerning changes in electoral law are considered periodically at a Speaker's Conference, consisting of MPs meeting under the chairmanship of the Speaker. As with other parliamentary committees, the party composition of the Conference reflects that of the House. The proceedings are in private and recommendations are published in the form of letters from the Speaker to the Prime Minister.

The party system

34. The existence in Britain of organized political parties each laying its own policies before the electorate has led to well-developed political divisions in Parliament, which are considered to be vital to democratic government. The party system has existed in one form or another since the eighteenth century, and began to assume its modern shape towards the end of the nineteenth century. Whenever there is a general election (or a by-election) the parties may put up candidates for election; any other citizen who wishes may also stand. The electorate then indicates, by its choice of candidate at the polls on election day, which of the opposing policies it would like to see put into effect. The candidate who polls the most votes is elected; an absolute majority is not required.

35. Since 1945 seven general elections have been won by the Conservative Party and six by the Labour Party, and the great majority of members of the House of Commons have represented either one or other of these two parties. In the general election of June 1987 all 650 constituencies in Britain were contested. In England, Wales and Scotland the Labour Party contested all the 633 seats and the Conservative Party (which did not contest the Speaker's constituency) contested 632. The Liberal and Social Democratic parties, which had formed an alliance in 1981 to contest the 1983 and 1987 general elections, between them also had 633 candidates; the Scottish National Party contested 71 of the 72 Scottish seats, while Plaid Cymru (Welsh Nationalists) contested all 38 constituencies in Wales.

Government and opposition

36. The party which wins the most seats (but not necessarily the most votes) at a general election, or which has the support of a majority of members in the House of Commons, is usually invited by the Sovereign to form a Government. On occasions when no party succeeds in winning an overall majority of seats, a minority Government may be formed.

37. By tradition, the leader of the majority party is appointed Prime Minister by the Sovereign, and chooses a team of ministers, including a Cabinet of about 20 members.

38. The party with the next largest number of seats is officially recognized as "Her Majesty's Opposition" (or "the Official Opposition"), with its own leader and its own "shadow cabinet", whose members act as spokesmen on the subjects for which government ministers have responsibility. Members of any other parties and any independent MPs who have been elected support or oppose the Government according to their party or their own views.

39. The Government has the major share in controlling and arranging the business of the two Houses. As the initiator of policy, it indicates which action it wishes Parliament to take, and explains and defends its position in public debate. Unlike Governments of the past, which were frequently obliged by members of their own party to withdraw measures, most present-day Governments can usually count on the voting strength of their supporters in the House of Commons and, depending on the size of their overall majority, can thus secure the passage of their legislation in substantially the form that they originally proposed. This development, which is the result of the growth of party discipline, has strengthened the hand of the Government, but it has also increased the importance of the Opposition. The greater part of the work of exerting pressure through criticism now falls on the Opposition, which is expected and given the opportunity, according to the practice of both Houses, to develop its own position in Parliament and state its own views.

Parliamentary control of the executive

40. Control of the Government is exercised finally by the ability of the House of Commons to force the Government to resign, by passing a resolution of "no confidence" or by rejecting a proposal which the Government considers so vital to its policy that it has made it a matter of confidence, or ultimately by refusing to vote the money required for the public service.

41. In addition to the system of close scrutiny of the work of government departments by select committees, the House of Commons offers a number of opportunities for a searching examination of government policy, both by the Opposition and by the Government's own backbenchers. As a representative of the ordinary citizen, an MP may challenge the policy put forward by a minister (i) during a debate on a particular bill, when he or she may object to its broad principles on the second reading or, as regularly happens, may put forward amendments at committee stage, (ii) through the institution of parliamentary questions and answers, (iii) during adjournment debates or (iv) during the debates on "Opposition days".

Question Time

42. Question Time in the House of Commons, in its modern usage, is largely a development of the twentieth century. Until well into the nineteenth century Members of Parliament had almost unlimited opportunities to speak to the House in the ordinary course of events. Nowadays, when parliamentary time is devoted mainly to public business, questions are regarded as the best means of eliciting information (to which members might not otherwise have access) about

the Government's intentions, as well as the most effective way of airing, and possibly securing some redress of, grievances brought to the notice of MPs by their constituents. From time to time questions may be used as part of an organized group campaign to bring about a change in government policy, and there may be "inspired" questions, when a member is asked to put down a question so that the minster responsible can make a public statement.

43. The rules governing admissible questions have been derived mainly from decisions taken over a long period by successive Speakers in relation to individual questions, although changes in the practice and procedure of Question Time were made following a House of Commons select committee report in 1972.

B. The Law

Administration

44. The United Kingdom judiciary is entirely independent of the Government and is not subect to ministerial direction or control. Responsibility for the administration of justice rests with the Lord Chancellor, the Home Secretary and the Secretaries of State for Scotland and Northern Ireland. Also concerned is the Prime Minister, who recommends the highest judicial appointments to the Crown.

45. The Lord Chancellor is the head of the judiciary (and sometimes sits as a judge in the House of Lords); he is concerned with court procedure and is responsible for the administration of all courts other than magistrates' and coroners' courts, and for a number of administrative tribunals. He appoints magistrates, and has general responsibility for the legal aid and advice schemes. He is also responsible for the administration of civil law reform.

46. The Home Secretary is concerned with the criminal law, the police service, prisons, and the probation and after-care service, and has general supervision over magistrates' courts, together with some specific responsibilities (such as approving the appointment of justices' clerks). Prison policy and the administration of custodial centres are functions of the Home Office Prison Department, and the Home Secretary appoints to each prison establishment a Board of Visitors representing the local community who need to satisfy themselves as to the state of prison premises, administration and treatment of inmates. They are required to report to the Home Secretary any abuse or matter of concern which comes to their attention. Boards have disciplinary powers in relation to serious breaches of discipline and hear applications or complaints from inmates. The Home Secretary is advised by a special Parole Board on the release of prisoners on licence.

47. Responsibility for the treatment of offenders under 17 is shared between the Home Office and the Department of Health. The Home Secretary is also responsible for advising the Queen on the exercise of the royal prerogative of mercy to pardon a person convicted of a crime or to remit all or part of a penalty imposed by a court.

48. The Attorney General and the Solicitor General are the Government's principal advisers on English law, and represent the Crown in appropriate domestic and international cases. They are senior barristers, elected members of the House of Commons and hold ministerial posts. The Attorney General is also Attorney General for Northern Ireland. As well as exercising various civil law functions, the Attorney General has final responsibility for enforcing the criminal law: the Director of Public Prosecutions is subject to the Attorney General's superintendence. The Attorney General is concerned with instituting and prosecuting certain types of criminal proceedings, but must exercise an independent discretion and must not be influenced by government colleagues. The Solicitor General is, in effect, the deputy of the Attorney General.

49. The Secretary of State for Scotland recommends the appointment of all judges other than the most senior ones, appoints the staff of the High Court of Justiciary and the Court of Session, and is responsible for the composition, staffing and organization of the sheriff courts. District courts are staffed and administered by the district and islands local authorities. The Secretary of State is also responsible for the criminal law of Scotland, crime prevention, and the police and the penal system, and is advised on parole matters by the Parole Board for Scotland. The Secretary of State is also responsible for legal aid in Scotland.

50. The Lord Advocate and the Solicitor General for Scotland are the chief legal advisers to the Government on Scottish questions and the principal representatives of the Crown for the purposes of litigation in Scotland. Both are government ministers. The Lord Advocate is closely concerned with questions of legal policy and administration and is also responsible for the Scottish parliamentary draftsmen. He has overall responsibility for the prosecution of crime in Scotland and, although he holds a ministerial post, he must exercise an independent discretion in carrying out this responsibility.

51. The administration of all courts is the responsibility of the Lord Chancellor, while the Northern Ireland Office, under the Secretary of State, deals with the police and the penal system. The Lord Chancellor has general responsibility for the legal aid and advice scheme in Northern Ireland.

Criminal courts

52. In England and Wales the initial decision to begin criminal proceedings normally lies with the police. Once the police have brought a criminal charge, the papers are passed to the Crown Prosecution Service which decides whether the case should be accepted for prosecution in the courts or whether the proceedings should be discontinued. In Scotland public prosecutors (procurators fiscal) decide whether or not to bring proceedings. In Northern Ireland there is a Director of Public Prosecutions. In England and Wales (and exceptionally in Scotland) a private person may institute criminal proceedings. Police may issue cautions, and in Scotland the procurator fiscal may warn, instead of prosecuting.

53. In April 1988 the Serious Fraud Office, a government department, was established to investigate and prosecute the most serious and complex cases of fraud in England, Wales and Northern Ireland.

England and Wales

54. The Crown Prosecution Service was established in England and Wales by the Prosecution of Offences Act 1985. The Director of Public Prosecutions is the head of the Service, which is responsibile for the prosecution of criminal offences in magistrates' courts and the Crown Court. The Service is divided into 31 areas, each headed by a locally based Chief Crown Prosecutor appointed by the Director of Public Prosecutions. The Service provides lawyers to prosecute cases in the magistrates' courts and briefs barristers to appear in the Crown Court. Although the decision to prosecute is generally delegated to the Chief Crown Prosecutors, some cases are dealt with by the headquarters of the Service: these include cases of national importance, exceptional difficulty or great public concern and those which require that suggestions of local influence be avoided. Such cases might include terrorist offences, breaches of the Official Secrets Acts, large-scale conspiracies to import drugs and the prosecution of police officers.

Scotland

55. Discharging his duties through the Crown Officer, the Lord Advocate is responsible for prosecutions in the High Court of Justiciary, sheriff courts and district courts. There is no general right of private prosecution; with a few minor exceptions crimes and offences may be prosecuted only by the Lord Advocate or his deputes or by the procurators fiscal, who are the Lord Advocate's local officials. The permanent adviser to the Lord Advocate on prosecution matters is the Crown Agent, who is head of the procurator fiscal service and is assisted in the Crown Office by a staff of legally qualified civil servants, all of whom have had experience as depute procurators fiscal. Prosecutions in the High Court are prepared by procurators fiscal and Crown Office officials and prosecuted by the Lord Advocate, the Solicitor-General for Scotland (the Lord Advocate's ministerial deputy) and advocates depute who are collectively known as Crown Counsel. Crimes tried before the sheriff and district courts are prepared and prosecuted by procurators fiscal. The police and other law enforcement agencies investigate crimes and offences and report to the procurator fiscal, who decides whether or not to prosecute, subject to the directions of Crown Counsel.

56. Under the Criminal Justice (Scotland) Act 1987 a procurator fiscal may make a conditional offer of fixed penalty to an alleged offender in respect of certain minor offences as an alternative to prosecution: the offender is not obliged to accept an offer but if he or she does so the prosecution loses the right to prosecute.

Northern Ireland

57. The Director of Public Prosecutions for Northern Ireland, who is responsible to the Attorney General, prosecutes all offences tried on indictment, and may do so in summary cases of a serious nature. Other summary offences are prosecuted by the police.

Courts in England and Wales

58. Criminal offences may be grouped into three categories. Offences triable only on dictment - the very serious offences such as murder, manslaughter, rape and robbery - are tried only by the Crown Court presided over by a judge sitting with a jury. Summary offences - the least serious offences and the vast majority of criminal cases - are tried by unpaid lay magistrates sitting without a jury. A third category of offences (such as theft, burglary or malicious woundings) are known as "either way" offences and can be tried either by magistrates or by the Crown Court depending on the circumstances of each case and the wishes of the defendant.

59. In addition to dealing with summary offences and the "either way" offences which are entrusted to them, the magistrates' courts commit cases to the Crown Court either for trial or for sentence. Committals for trial are either of indictable offences or of "either way" offences which it has been determined will be tried in the Crown Court. Committals for sentence occur when the defendant in an "either way" case has been tried summarily but the court has decided to commit him or her to the Crown Court for sentence.

60. Magistrates must as a rule sit in open court to which the public and the media are admitted. A court normally consists of three lay magistrates - known as justices of the peace - advised on points of law and procedures by a legally qualified clerk or a qualified assistant. Magistrates are appointed by the Lord Chancellor, except in Lancashire, Greater Manchester and Merseyside where appointments are made by the Chancellor of the Duchy of Lancaster. There are nearly 28,000 lay magistrates.

61. There are 63 full-time, legally qualified stipendiary magistrates who may sit alone and usually preside in courts in urban areas where the workload is heavy.

62. Cases involving people under 17 are heard in juvenile courts. These are specially constituted magistrates' courts which either sit apart from other courts or are held at a different time. Only limited categories of people may be present and media reports must not identify any juvenile appearing either as a defendant or a witness. Where a young person under 17 is charged jointly with someone of 17 or over, the case is heard in an ordinary magistrates' court or the Crown Court. If the young person is found guilty, the court may transfer to a juvenile court for sentence unless satisfied that it is undesirable to do so.

63. The Crown Court deals with trials of the more serious cases, the sentencing of offenders committed for sentence by magistrates' courts, and appeals from magistrates' courts. It sits at about 90 centres and is presided over by High Court judges, full-time "circuit judges" and part-time recorders. All contested trials take place before a jury. Magistrates sit with a circuit judge or recorder to deal with appeals and committals for sentence.

64. The Government is planning to alter court procedures regarding cases of serious or complex fraud with a view to bypassing full committal proceedings in magistrates' courts at the discretion of the prosecution, but with a

special procedure under which the accused would be able to apply to the Crown Court to be discharged on the ground that there was no case to answer.

Appeals

65. A person convicted by a magistrates' court may appeal to the Crown Cou against the sentence imposed if he has pleaded guilty, or against the conviction or sentence imposed if he has not pleaded guilty. Where the appe is on a point or procedure of law, either the prosecutor or the defendant ma appeal from the magistrates' court to the High Court. Appeals from the Crown Court, either against conviction or against sentence, are made to the Court of Appeal (Criminal Division). The House of Lords is the final appeal court for all cases, from either the High Court or the Court of Appeal. Before a case can go to the Lords, the court hearing the previous appeal mus certify that it involves a point of law of general public importance and either that court or the Lords must grant leave for the appeal to be heard. The nine Lords of Appeal in Ordinary are the judges who deal with Lords appeals.

66. The Attorney General may seek the opinion of the Court of Appeal on a point of law which has arisen in a case where a person tried on indictment acquitted; the court has power to refer the point to the House of Lords if necessary. The acquittal in the original case is not affected, nor is the identity of the acquitted person revealed without his or her consent. Under provision in the Criminal Justice Act 1988, which has not yet been implemented, the Attorney General would be empowered, where he considered th a sentence passed by the Crown Court was over-lenient, to refer the case to the Court of Appeal, which would be able, if it thought fit, to increase the sentence within the statutory maximum laid down by Parliament for the offen

Scotland

67. In Scotland the High Court of Justiciary tries such crimes as murder, treason and rape; the sheriff court is concerned with less serious offences and the district court with minor offences. Criminal cases are heard either under solemn procedure, when proceedings are taken on indictment and the ju sits with a jury of 15 members, or under summary procedure, when the judge sits without a jury. All cases in the High Court and the more serious ones sheriff courts are tried by a judge and jury. Summary procedure is used in the less serious cases in the sheriff courts, and in all cases in the distr courts. District courts are the administrative responsibility of the distr and the islands local government authorities; the judges are lay justices o the peace and the local authorities may appoint up to one quarter of their elected members to be ex officio justices. In Glasgow there are four stipendiary magistrates who are full-time salaried lawyers and have equival criminal jurisdiction to a sheriff sitting under summary procedure. Childr under 16 who have committed an offence or are for other reasons specified i statute considered to need compulsory care may be brought before a children hearing comprising three members of the local community.

68. Scotland's six sheriffdoms are further divided into sheriff court districts, each of which has one or more sheriffs, who are the judges of th court. The High Court of Justiciary, Scotland's supreme criminal court, is

both a trial and an appeal court. Any of the following judges is entitled to try cases in the High Court: the Lord Justice General (the head of the court), the Lord Justice Clerk (the judge next in seniority) or one of the Lord Commissioners of Justiciary. The main seat of the court is in Edinburgh, although the High Court also tries cases in other towns.

69. All appeals are dealt with by the High Court in Edinburgh. In both solemn and summary procedure, an appeal may be brought against conviction, or sentence, or both. The Court may authorize a retrial if it sets aside a conviction. There is no further appeal to the House of Lords. In summary proceedings the prosecutor may appeal on a point of law against acquittal or sentence. The Lord Advocate may seek the opinion of the High Court on a point of law which has arisen in a case where a person tried on indictment is acquitted. The acquittal in the original case is not affected.

Northern Ireland

70. The structure of Northern Ireland courts is broadly similar to that in England and Wales. The day-to-day work of dealing summarily with minor cases is carried out by magistrates' courts presided over by a full-time, legally qualified resident magistrate. Young offenders under 17 and young people under 17 who need care, protection and control are dealt with by juvenile courts consisting of the resident magistrate and two lay members (at least one of whom must be a woman) specially qualified to deal with juveniles. Appeals from magistrates' courts are heard by the county court.

71. The Crown Court deals with criminal trials on indictment. It is served by High Court and county court judges. Proceedings are heard before a single judge, and all contested cases, other than those involving offences specified under emergency legislation, take place before a jury. Appeals from the Crown Court against conviction or sentence are heard by the Northern Ireland Court of Appeal. Procedures for a further appeal to the House of Lords are similar to those in England and Wales.

Trial

72. Criminal trials in the United Kingdom take the form of a contest between the prosecution and the defence. Since the law presumes the innocence of an accused person until guilt has been proved, the prosecution is not granted any advantage, apparent or real, over the defence. A defendant (in Scotland, called an accused) has the right to employ a legal adviser and may be granted legal aid from public funds. If remanded in custody, the person may be visited by a legal adviser to ensure a properly prepared defence. In England, Wales and Northern Ireland during the preparation of the case, the prosecution usually tells the defence of relevant documents which it is not proposed to put in evidence and discloses them if asked to do so. The prosecution should also inform the defence of witnesses whose evidence may help the accused and whom the prosecution does not propose to call. The defence or prosecution may suggest that the defendant's mental state renders him or her unfit to be tried. If the jury (or, in Scotland, the judge) decides that this is so, the defendant is admitted to a specified hospital.

73. Criminal trials are normally in open court and rules of evidence (concerned with the proof of facts) are rigorously applied. If evidence is improperly admitted, a conviction can be quashed on appeal. During the trial the defendant has the right to hear and cross-examine witnesses for the prosecution, normally through a lawyer; to call his or her own witnesses who, if they will not attend voluntarily, may be legally compelled to attend; and to address the court in person or through a lawyer, the defence having the right to the last speech at the trial. The defendant cannot be questioned without consenting to be sworn as a witness in his or her own defence. When he or she does testify, cross-examination about character or other conduct may be made only in exceptional circumstances; generally the prosecution may not introduce such evidence.

74. In England, Wales and Northern Ireland the Criminal Justice Act 1987 provides that in complex fraud cases there should be a preparatory open Crown Court hearing at which the judge will be able to hear and settle points of law and to define the issues to be put to the jury.

Jury

75. In jury trials the judge decides questions of law, sums up the evidence for the jury and instructs it on the relevant law, and discharges the accused or passes sentence. Only the jury decides whether the defendant is guilty or not guilty. In England and Wales, if the jury cannot reach a unanimous verdict, the judge may direct it to bring in a majority verdict provided that, in the normal jury of 12 people, there are not more than two dissentients. In Scotland, where the jury consists of 15 people, the verdict may be reached by a simple majority, but as a general rule, no person may be convicted without corroborated evidence. If the jury returns a verdict of "not guilty" (or, in Scotland "not proven", which is an alternative verdict of acquittal), the prosecution has no right of appeal and the defendant cannot be tried again for the same offence. In the event of a "guilty" verdict, the defendant has a right of appeal to the appropriate court.

76. A jury is completely independent of the judiciary. Any attempt to interfere with a jury once it is sworn in is punishable under the Contempt of Court Act 1981.

77. Although the right of the defence to challenge up to three potential members of a jury without giving any reason is to be abolished in England and Wales, it will remain open to both parties to challenge potential jurors by giving reasons where they believe that an individual juror is likely to be biased.

78. People between the ages of 18 and 65 whose names appear on the electoral register, with certain exceptions, are liable for jury service and their names are chosen at random. (Proposals to increase the upper age limit from 65 to 70 in England and Wales are contained in the Criminal Justice Act 1988.) Ineligible persons include the judiciary, priests, people who have within the previous 10 years been members of the legal profession, the Lord Chancellor's Department, or the police, prison and probation services, and certain sufferers from mental illness. Persons disqualified from jury service include those who have, within the previous 10 years, served any part of a sentence of

imprisonment, youth custody or detention, or been subject to a community service order, or, within the previous five years, been placed on probation. Anyone who has been sentenced to five or more years' imprisonment is disqualified for life.

Coroners' courts

79. Coroners investigate violent and unnatural deaths or sudden deaths where the cause is unknown. Deaths may be reported to the local coroner (who is either medically or legally qualified, or both) by doctors, the police, the registrar, various public authorities or members of the public. If the death is sudden and the cause unknown, the coroner need not hold an inquest if, after a post-mortem examination has been made, he or she is satisfied that the death was due to natural causes. Where there is reason to believe that the deceased died a violent or unnatural death or died in prison or in other specified circumstances, the coroner must hold an inquest and it is the duty of the coroner's court to establish how, when and where the deceased died. A coroner may sit alone or, in certain circumstances, with a jury. In Scotland the local procurator fiscal inquires privately into all sudden and suspicious deaths and may report the findings to the Crown Office. In a minority of cases a fatal accident inquiry may be held before the sheriff. For certain categories (such as deaths in custody) a fatal accident inquiry is mandatory. In addition, the Lord Advocate has discretion to instruct an inquiry in the public interest in cases where the circumstances give rise to public concern.

The Civil law

80. The main subdivisions of the civil law of England, Wales and Northern Ireland are: family law, the law of property, the law of contract and the law of torts (covering injuries suffered by one person at the hands of another irrespective of any contact between them and including concepts such as negligence, defamation and trespass). Other branches of the civil law include constitutional and administrative (particularly concerned with the use of executive power), industrial, maritime and ecclesiastical law. Scottish civil law has its own, often analogous, branches.

81. A review body was set up in 1985 to consider improving the machinery of civil justice in England and Wales. Its report was published in June 1988 and it recommended reforms designed to reduce delays in the handling of cases, ensure the best use of court resources and reduce the cost of litigation.

Civil courts: England and Wales

82. The limited civil jurisdiction of magistrates' courts extends to matrimonial proceedings for custody and maintenance orders, adoption orders and affiliation and guardianship orders. The courts also have jurisdiction regarding nuisances under the public health legislation and the recovery of rates. Committees of magistrates license public houses, betting shops and clubs.

83. The jurisdiction of the 274 county courts covers actions founded upon contract and tort (with minor exceptions), trust and mortgage cases and

actions for the recovery of land. Cases involving claims exceeding set limits may be tried in the county court by consent of the parties or, in certain circumstances, on transfer from the High Court.

84. Other matters dealt with by the county courts include hire purchase, the Rent Acts, landlord and tenant and adoption cases. Divorce cases are determined in those courts designated as divorce county courts and outside London bankruptcies are dealt with in certain county courts. The courts also deal with complaints of race and sex discrimination. Where small claims are concerned (especially those involving consumers), there are special arbitration facilities and simplified procedures.

85. All judges of the Supreme Court (comprising the Court of Appeal, the Crown Court and the High Court) and all circuit judges and recorders have power to sit in the county courts, but each court has one or more circuit judges assigned to it by the Lord Chancellor and the regular sittings of the court are mostly taken by them. The judge normally sits alone, although on request the court may, exceptionally, order a trial with a jury.

86. The High Court of Justice is divided into the Chancery Division, the Queen's Bench Division and the Family Division. Its jurisdiction is both original and appellate and covers civil and some criminal cases. In general, particular types of work are assigned to a particular division. The Family Division, for instance, is concerned with all jurisdiction affecting the family, including that relating to adoption and guardianship. The Chancery Division deals with the interpretation of wills and the administration of estates. Maritime and commercial law are the responsibility of admiralty and commercial courts of the Queen's Bench Division.

87. Each of the 80 or so judges of the High Court is attached to one division on appointment but may be transferred to any other division while in office. Outside London (where the High Court sit at the Royal Courts of Justice) sittings are held at 26 county court centres. For the hearing of cases at first instance, High Court judges sit alone. Appeals in civil matters from lower courts are heard by courts of two (or sometimes three) judges, or by single judges of the appropriate division, nominated by the Lord Chancellor.

Appeals

88. Appeals in matrimonial, adoption and guardianship proceedings heard by magistrates' courts go to a divisional court of the Family Division of the High Court. Affiliation appeals are heard by the Crown Court, as are appeals from decisions of the licensing committees of magistrates. Appeals from the High Court and county courts are heard in the Court of Appeal (Civil Division), consisting of the Master of the Rolls and 27 Lords Justices of Appeal, and may go on to the House of Lords, the final court of appeal in civil and criminal cases.

89. The judges in the House of Lords are the nine Lords of Appeal in Ordinary, who must have a quorum of three, but usually sit as a group of five, and sometimes even of seven. Lay peers do not attend the hearing of appeals (which normally take place in a committee room and not in the legislative

chamber), but peers who hold or have held high judicial office may also sit. The President of the House in its judicial capacity is the Lord Chancellor.

Scotland

90. The main civil courts are the sheriff courts and the Court of Session. The civil jurisdiction of the sheriff court extends to most kinds of action and is normally unlimited by the value of the case. Much of the work is done by the sheriff, against whose decision an appeal may be made to the sheriff-principal or directly to the Court of Session.

91. The Court of Session sits only in Edinburgh, and in general has jurisdiction to deal with all kinds of action. The main exception is an action exclusive to the sheriff court, where the value claimed is less than a set amount. It is divided into two parts: the Outer House, a court of first instance, and the Inner House, mainly an appeal court. The Inner House is divided into two divisions of equal status, each consisting of four judges - the first division being presided over by the Lord President and the second division by the Lord Justice Clerk. Appeals to the Inner House may be made from the Outer House and from the sheriff court. From the Inner House an appeal may go to the House of Lords. The judges of the Court of Session are the same as those of the High Court of Justiciary. The Lord President of the Court of Session holds the office of Lord Justice General in the High Court of Justiciary.

92. The Scottish Land Court is a special court which deals exclusively with matters concerning agriculture. Its chairman has the status and tenure of a judge of the Court of Session and its other members are lay specialists in agriculture.

Northern Ireland

93. Minor civil cases in Northern Ireland are dealt with in county courts, though magistrates' courts also deal with certain classes of civil case. The superior civil law court is the High Court of Justice from which an appeal may be made to the Court of Appeal. These two courts, together with the Crown Court, comprise the Supreme Court of Judicature of Northern Ireland and their practice and procedure are similar to those in England and Wales. The House of Lords is the final civil appeal court.

Civil proceedings

94. In England and Wales civil proceedings are instituted by the aggrieved person; no preliminary inquiry on the authenticity of the grievance is required. Actions in the High Court are usually begun by a writ of summons served on the defendant by the plaintiff, stating the nature of the claim. A defendant intending to contest the claim informs the court. Documents setting out the precise question in dispute (the pleadings) are then delivered to the court. County court proceedings are initiated by a summons served on the defendant by the court; subsequent procedure is simpler than in the High Court.

95. A decree of divorce must be pronounced in open court, but a procedure for most undefended cases dispenses with the need to give evidence in court and permits written evidence to be considered by the registrar.

96. Civil proceedings, as a private matter, can usually be abandoned or ended by compromise at any time. Actions brought to court are usually tried without a jury, except in defamation, false imprisonment or malicious prosecution cases, when either party may, except in certain special circumstances, insist on trial by jury, or a fraud case, when the defendant may claim this right. The jury decides questions of fact and damages awarded to the injured party; majority verdicts may be accepted.

97. An action in a magistrates' court is begun by a complaint on which the court may serve the defendant with a summons. This contains details of the complaint and the date on which it will be heard. Parties and witnesses give their evidence at the court hearing. Domestic proceedings are normally heard by not more than three lay justices including, where practicable, a woman; members of the public are not allowed to be present. The court may order provision for custody, access and supervision of children, as well as maintenance payments for spouses and children.

98. Judgements in civil cases are enforceable through the authority of the court. Most are for sums of money and may be enforced, in cases of default, by seizure of the debtor's goods or by a court order requiring an employer to make periodic payments to the court by deduction from the debtor's wages. Other judgements can take the form of an injuction restraining someone from performing an illegal act. Refusal to obey a judgement may result in imprisonment for contempt of court. Arrest under an order of committal may be effected only on a warrant.

99. Normally the court orders the costs of an action to be paid by the party losing it, but, in the case of family law maintenance proceedings, a magistrates' court can order either party to pay the whole or part of the other's costs.

100. In Scotland proceedings in the Court of Session or ordinary actions in the sheriff court are initiated by serving the defender with a summons (an initial writ in the sheriff court). In Court of Session actions the next step is the publication of the action in the court lists. A defender who intends to contest the action must inform the court; if he or she does not appear, the court grants a decree in absence in favour of the pursuer. In ordinary actions in the sheriff court the defender is simple required to give a written notice of intention to defend within a certain number of days after service of the initial writ, and this is followed by a formal appearance in court by the parties to the dispute or their solicitors.

101. In summary cases (involving small sums) in the sheriff court the procedure is less formal. The statement of claim is incorporated in the summons. The procedure is designed to enable most actions to be carried through without the parties involved having to appear in court. Normally they (or their representatives) need appear only when an action is defended.

102. Proceedings in Northern Ireland are similar to those in England and Wales. County court proceedings are commenced by a civil bill served on the defendant; there are no pleadings in the county court. Judgements of civil courts are enforceable through a centralized procedure administered by the Enforcement of Judgements Office.

Restrictive Practices Court

103. The Restrictive Practices Court is a specialized United Kingdom court which deals with monopolies and restrictive trade practices. It comprises five judges and up to ten other people with expertise in industry, commerce or public life.

Administrative tribunals

104. Administrative tribunals exercise judicial functions separate from the courts. Generally, they are set up under statutory powers which govern their constitution, functions and procedure. Compared with the courts, they tend to be more accessible, less formal and less expensive. They also have expert knowledge in their particular jurisdictions.

105. The expansion of the tribunal system in the United Kingdom is comparatively recent, most tribunals having been set up since 1945. Independent of the Government, tribunals rule on certain rights and obligations of private citizens towards one another or towards a government department or other public authority. A number of important tribunals decide disputes between private citizens - for example, industrial tribunals have a major part to play in employment disputes. Some (such as those concerned with social security) resolve claims by private citizens against public authorities. A further group (including tax tribunals) decide disputed claims by public authorities against private citizens, while others decide issues and disputes which do not directly affect financial rights or liabilities (such as the right to enter or visit the United Kingdom).

106. Tribunal members are normally appointed by the minister concerned with the subject, but other authorities have the power of appointment in some cases. For example, the Lord Chancellor (and, in Scotland, the Lord President of the Court of Session) makes most appointments where a lawyer chairman or member is required.

107. In many tribunal jurisdictions, a two-tier system operates with an initial right of appeal to a lower tribunal and a final right of appeal, usually on a point of law, to a higher tribunal. Appeals on a point of law only from some of the higher tribunals may be made to the High Court in England and Wales, to the Court of Session in Scotland and to the Court of Appeal in Northern Ireland. There are a few exceptions including, for example, immigration appeals where there is no right of appeal directly from the Immigration Appeals Tribunal to the courts.

108. The Council on Tribunals (an independent body established in 1958) exercises general supervision over most tribunals, advising on draft legislation and rules of procedure, monitoring their activities and reporting

on particular matters. A Scottish Committee of the Council exercises the same function in Scotland. The Council has a similar responsibility with regard to public inquiries.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

A. Authorities having jurisdiction affecting human rights

109. Under the constitution of the United Kindom the possession of rights and freedoms is an inherent part of being a member of our society. They can only be restricted by a democratic decision of Parliament. The role of Parliament therefore is not to confer rights but to consider whether they need to be restricted balancing the needs of society against those of the individual. The following paragraphs set out the mechanisms and legal safeguards through which human rights in the United Kingdom are protected.

B. Remedies, compensation and rehabilitation

Legal aid

110. A person in need of legal advice or legal representation in court may qualify for help with the costs out of public funds, either free or with a contribution according to his or her means. Ministerial responsibility for legal aid rests with the Lord Chancellor and, in Scotland, the Secretary of State for Scotland. Civil legal aid schemes are administered by the Legal Aid Board, the Law Society of Northern Ireland and the Scottish Legal Aid Board.

111. People whose income and savings are within certain limits are entitled to help from a solicitor on any legal matter as it affects the applicant's particular circumstances. Such help includes advice on the relevant law, writing letters on the client's behalf, and taking the opinion of a barrister or advocate. In England and Wales it may be extended to cover representation in civil proceedings in the magistrates' court, Mental Review Tribunal hearings and certain disciplinary proceedings before prisons' Boards of Visitors. The scheme provides for initial work to be done up to a specified cost limit.

112. Legal aid, which covers representation before the court, may be available for most civil proceedings to those who satisfy the financial eligibility conditions. An applicant for legal aid must also show not only that he or she has reasonable grounds for taking or defending proceedings but also that it is reasonable in all the circumstances of the case that he or she should receive, or continue to receive, legal aid. If legal aid is granted the case is conducted in the normal way except that in England and Wales no money passes between the client and the solicitor; all payments are made through the legal aid fund.

113. In certain limited circumstances the successful unassisted opponent of a legally aided party may recover his or her costs in the case from the legal aid fund. Where the assisted person recovers or preserves money or property in the proceedings the legal aid fund may have a first charge on that money or property to recover the sums it has expended on the assisted person's behalf.

114. In criminal proceedings in England and Wales a legal aid order may be made by the court concerned if it appears to be in the interests of justice and if a defendant qualifies for financial help. An order must be made (subject to means) when a person is committed for trial on a murder charge or where the prosecutor appeals or applies for leave to appeal from the Court of Appeal (Criminal Division) to the House of Lords. No person who is unrepresented can be given a custodial sentence for the first time unless given the opportunity to apply for legal aid.

115. Under the Police and Criminal Evidence Act 1984 the Legal Aid Board makes arrangements for duty solicitors to be available to magistrates' courts to provide initial advice and representation to unrepresented defendants, and also for duty solicitors to be available, on a 24-hour basis, to give advice and assistance to suspects at police stations. The services of a duty solicitor are free.

116. The arrangements for aid in criminal proceedings in Northern Ireland are broadly similar. In Scotland there is a duty solicitor scheme for accused people in custody in sheriff and district court cases, and the "interests of justice" test applies only in summary cases, where decisions on applications for legal aid are taken by the Scottish Legal Aid Board. Legal aid for criminal cases in Scotland and Northern Ireland is free; the assisted person is not required to make any contributions towards the cost of his or her legal representations.

117. In a number of urban areas law centres provide free legal advice and representation. These law centres, which are financed from various sources often including local government authorities, usually employ full-time salaried lawyers and many have community workers. Much of their time is devoted to housing, employment, social security and immigration problems. Free advice is also available in Citizens Advice Bureaux, consumer and housing advice centres and in specialist advice centres run by various voluntary organizations.

Compensation for wrongful conviction/detention

118. In October 1988 the United Kingdom introduced legislation to incorporate, on a statutory basis, the provisions of article 14 (6) of the International Covenant on Civil and Political Rights. Under the provisions of section 133 of the Criminal Justice Act 1988 a person convicted of a criminal offence which has been quashed by the Court of Appeal (1) upon application made outside the normal time limits or (2) following actions by the Secretary of State to use his powers of intervention to refer a conviction to the Court of Appeal or (3) in respect of which a pardon has been granted by exercise of the Royal Prerogative of Mercy, has the right to apply to the Secretary of State for payment of compensation. If the person concerned has died, his or her personal representative may submit an application to the Secretary of State.

119. The final decision on whether compensation should be paid rests with the Secretary of State, who will consider whether the decision of the Court of Appeal to quash the conviction or the grant of a pardon was due to a new or newly discovered fact showing beyond reasonable doubt that there was a miscarriage of justice. This criterion is less restrictive than that

specified in article 14 (6) of the International Covenant, which requires the new or newly discovered fact to show conclusively that there has been a miscarriage of justice. The Secretary of State will, in reaching a decision on whether compensation is payable, also take into account whether the non-disclosure of the new fact was wholly or partly attributable to the person applying for compensation.

120. Section 133 of the Criminal Justice Act 1988 does not provide for compensation in cases where a person has been detained in custody charged with an offence which has subsequently not been pursued, or where there has been an acquittal at the court of trial or on an appeal made within the normal time limits allowed for an appeal. In such circumstances, the Secretary of State may upon application to him, authorize an ex gratia payment of compensation.

121. Payment of the compensation will only be considered where the detention of the applicant has resulted from serious default on the part of a member of the police or some other public authority, or in other exceptional circumstances, for example where facts emerge at trial which completely exonerate the accused. Applications for compensation will not be considered simply because, at trial or on appeal, the prosecution was unable to sustain the burden of proof beyond a reasonable doubt in relation to the charge brought.

122. If the Secretary of State considers that payment of compensation is justified under section 133 of the Criminal Justice Act 1988 or the ex gratia scheme, the amount will be determined by an independed assessor. The Secretary of State has undertaken to pay whatever sum of compensation the assessor recommends in respect of a particular application. This payment will include any reasonable legal costs incurred by the applicant.

123. Acceptance of compensation authorized by the Secretary of State does not require the application to sign any undertaking which restricts that person's right to take other forms of action.

124. Persons detained in custody for other reasons without lawful authority, for example through an error in the calculation of a sentence imposed by a court or a failure to act promptly upon a court direction to release a person on bail, may also apply to the Secretary of State for an ex gratia payment of compensation. They may also take legal action to recover damages.

The position of the victims of crime

125. The courts may order an offender, upon conviction, to pay compensation to the victim for personal injury, loss or damage resulting from an offence. In England and Wales the courts are obliged to consider compensation in appropriate cases and to give reasons for not awarding compensation to a victim. Compensation for a victim must come ahead of a fine if the court is considering both, and the recovery of amounts awarded in compensation must be put ahead of recovery of fines.

126. Where the Crown Prosecution Service declines to prosecute, victims may prosecute privately, but in practice seldom do so. Victims may also sue for

damages in the civil courts. Court procedure has been simplified so that persons without legal knowledge can bring small claims for loss or damage.

127. Victims of any nationality who suffer serious injury as a result of violent crime in Britain may apply for compensation from public funds under the Criminal Injuries Compensation Scheme, administered by a Board. Compensation covers pain and suffering and loss of facility as well as loss of earnings and future loss. In Northern Ireland there is separate statutory provision for compensation to be made from public funds for criminal injuries, and for malicious damage to property, including the resulting loss of profits.

128. In February 1990 Britain ratified the European Convention on the Compensation of Victims of Violent Crime.

129. Practical consideration is also given to the needs of victims of crime. There are more than 350 victim support schemes covering 96 per cent of the population in England and Wales, with over 6,000 trained volunteers. They may visit, telephone or write to victims with information and to offer advice. The local schemes are supported by government grant which meets either the salaries of full- or part-time coordinators or the schemes' running costs. The local schemes are coordinated by a national organization, Victim Support, which is also funded by government grant. Broadly similar arrangements apply in Scotland and Northern Ireland.

130. In February 1990 the Government published a Victim's Charter. This set out for the first time standards of service that victims of crime are entitled to expect from the criminal justice agencies.

C. Constitutional protection of human rights

131. The United Kingdom does not have a Bill of Rights or written constitution. The system of parliamentary government in the United Kingdom is the result of a gradual evolution spanning several centuries. Under the United Kingdom's constitutional arrangements the possession of rights and freedoms is an inherent part of being a member of our society. Rights, therefore, are not conferred by the Government; they already exist unless Parliament decides that the needs of society are such that they should be restricted in some specific way.

D. Incorporation of human rights instruments into national legislation

132. Treaties and conventions are not incorporated directly into domestic law, as happens in some countries. Instead, if any change in the law is needed to enable the United Kingdom to comply with a treaty or convention, the Government introduce a bill designed to give effect to the relevant articles of the treaty or convention. The bill is subject to the normal parliamentary procedures.

E. Enforcement by courts of human rights instruments

133. Courts in the United Kingdom interpret only those laws made by Parliament.

F. National machinery for implementation of human rights

134. Human rights are safeguarded in the United Kingdom through the work of bodies established under the following statutes:

(a) The Sex Discrimination Act 1975 (Equal Opportunities Commission);

(b) The Race Relations Act 1976 (Commission for Racial Equality);

(c) The Data Protection Act 1984 (Data Protection Registrar);

(d) The Police and Criminal Evidence Act 1984 (Police Complaints Authority).

Equal opportunities

135. Under the Sex Discrimination Act 1975 it became unlawful to treat one person less favourably than another on grounds of sex in employment (including training), education and the provision to the public of housing, goods, facilities and services. Advertisements indicating an intention unlawfully to discriminate were also made illegal. In order to comply with a European Community equal treatment directive, the Act was amended in 1986 to remove exemptions enjoyed by firms employing five or fewer people, to give women the legal right to continue working until the same age as men in those occupations with different retirement ages for men and women and to remove restrictions on shift and night working by women. The Equal Pay Act 1970 (as amended) gives women the right to equal pay with men when doing work that is the same or broadly similar, work judged equal by a job evaluation scheme and, since 1984, work of equal value. Both Acts apply to discrimination against either sex. Similar legislation has been passed in Northern Ireland.

136. People who believe that they have been the subject of discrimination have the right to complain to an industrial tribunal in respect of discrimination in employment, or otherwise to a civil court of law. Compensation or damages, a declaration of rights or an order to carry out, or refrain from, specified acts are available as remedies. There is a right of appeal against a court or tribunal decision.

137. The Equal Opportunities Commission established by the 1975 Act helps to enforce the legislation, provides advice and assistance to those who believe they have suffered discrimination, promotes equality of opportunity between men and women, and keeps under review the working of the legislation. The Commission has a code of practice regarding discrimination in employment.

138. The sex discrimination (Northern Ireland) order 1976 makes it unlawful to discriminate on grounds of sex or marriage in employment or in the provision of goods, facilities and services. It established the Equal Opportunities Commission for Northern Ireland which keeps under review the operation of the Order, investigates unlawful discriminatory practices and, where necessary, takes enforcement action.

139. Under European Community legislation member States are obliged to eliminate any existing discrimination in statutory social security schemes providing protection against sickness, unemployment, invalidity, old age, accidents at work or occupational diseases. There are, however, exclusions such as the determination of pensionable age. The United Kingdom has taken steps to implement this Community legislation in its social security system.

Race relations

140. The promotion of equal opportunity in a multiracial society in which all people have the same rights and responsibilities is the central objective of the Government's race relations policy. It has been the policy of successive British Governments that members of the ethnic minorities living in Britain should have the same opportunities to contribute to and benefit from society whatever their ethnic origins.

141. Under the Race Relations Act 1976, which strengthened and superseded previous legislation in England, Scotland and Wales, it is unlawful to treat one person less favourably than another on grounds of colour, race, nationality (including citizenship) or ethnic or national origins; this applies to employment (including training), education and the provision to the public of housing, goods, facilities and services, and premises. Advertisements indicating an intention to discriminate are, with few exceptions also unlawful. The procedure relating to the hearing of complaints of racial discrimination is the same as that for complaints concerning sex discrimination; individuals have the right of direct access to the civil courts and industrial tribunals.

142. The Commission for Racial Equality was established by the 1976 Act to work towards the elimination of discrimination, to promote equality of opportunity and good race relations, and to keep under review the working of the Act. The Commission provides information and advice to the public about the Act and has discretion to assist individuals who consider that they have been the subject of unlawful discrimination. It has drawn up a code of practice for the elimination of racial discrimination and the promotion of equality of opportunity in employment which gives practical guidance to employers, trade unions and others on the provisions of the Act; the code was approved by Parliament and became operative in April 1984. The Commission also makes grants for projects undertaken locally by over 100 community relations councils and other bodies. The Race Relations Act does not apply to Northern Ireland, where different antidiscrimination legislation applies to suit the local circumstances.

143. The law regarding incitement to racial hatred has been strengthened by the Public Order Act 1986 which came into force in April 1987. A person using threatening, abusive or insulting words or behaviour or displaying, publishing or distributing such material is guilty of an offence; this applies both where racial hatred is likely to be stirred up and where the person concerned intends to stir it up. The Act also extends the law to cover broadcasting (except by the British Broadcasting Corporation and the Independent Television Commission) and cable and other media which involve recordings of visual images or sounds. It is also an offence to possess racially inflammatory material and there are powers of search, seizure and forfeiture in relation to this.

Data protection

144. The growing power of computers to collect and redistribute information about individuals has been a matter of concern since the early 1970s. The Data Protection Act 1984 applied safeguards to the handling of personal data on computer. This in turn enabled the United Kingdom to ratify the 1981 Council of Europe Convention on Data Protection, and thus ensure that trade with parties such as France and Germany would not be inhibited by artificial restrictions placed by individual countries on transfer of information.

145. The 1984 Act's Data Protection Principles require, for example, that personal data should be processed fairly and lawfully, used only for specified purposes and subject to proper security. Those who wish to process data must (with some exceptions) register with the Data Protection Registrar, who has powers to enforce compliance with the Principles.

146. Although the Act (and the parent Convention) are concerned with data protection, they are also intended to facilitate flow of the data; safeguards have been applied, thus striking a balance between the right to know and individual privacy. It is a common misconception that the Act gives absolute protection to personal data; rather, it regulates the disclosure of data. For example, data can lawfully be disclosed to those third parties who are registered as disclosees.

Complaints against the police

147. Provision for the handling of complaints is made in part IX of the Police and Criminal Evidence Act 1984 (PACE) and in Regulations.

148. The 1984 Act abolished the Police Complaints Board established under the Police Act 1976 and set up in its place the Police Complaints Authority (CA). This part of the Act came into force on 29 April 1985, and the PCA can only supervise the investigation of events on or after 29 April 1984, although their other powers (e.g. in respect of discipline) are not so limited. The authority's functions are described below.

149. Section 84 of the Act defines "complaint" as any complaint about the conduct of a police officer which is submitted by a member of the public or on behalf of a member of the public and with his written consent. The same section provides that any aspect of a complaint which relates to the direction and control of a police force by the chief officer or a person performing the functions of the chief officer is outside the scope of the arrangements for dealing with complaints set out in part IX of PACE.

150. Where the complaint is against a senior officer, the relevant police authority is required by section 86 of the Act to record and investigate it, although if they are satisfied that the conduct complained of, even if proved, would not justify a criminal or disciplinary charge they may deal with it according to their discretion.

151. Where a chief officer receives a complaint against an officer of his force who is of the rank of chief superintendent or below, he is required by

section 85 of the Act to record it and to arrange for it either to be resolved informally or, if it is not suitable for informal resolution, to be formally investigated.

152. In certain circumstances the requirement to investigate formally or resolve informally a complaint may be dispensed with. The Police (Complaints) (General) Regulations 1985 provide for such a dispensation in any case where a complaint is withdrawn. The Police (Dispensation from Requirement to Investigate Complaints) Regulations 1985, which was amended by the Police (Dispensation from Requirement to Investigate Complaints) Regulations 1990, provide for such a dispensation in the following circumstances:

(a) Where a complaint is anonymous or repetitious;

(b) Where a complaint is deemed to be repetitious and where the previous complaint had been informally resolved;

(c) Where a complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints;

(d) Where more than 12 months have elapsed between the incident, or the latest incident, giving rise to the complaint and the making of the complaint, and either where there is no good reason for the delay or where injustice would be likely to be caused by the delay.

153. Section 85 of the 1984 Act provides that the first step to be taken by the chief officer after the recording of a complaint is to consider whether informal resolution might be appropriate and if so to appoint an officer of at least the rank of chief inspector to carry out the procedure. Complaints are only suitable for informal resolution if the conduct complained of, even if proved, would not justify a criminal or disciplinary charge and if the complainant is content for the complaint to be handled in this way.

154. Informal resolution is intended to provide a flexible and simple procedure for dealing with complaints of a minor nature which would otherwise attract the full length and formality of the investigation process. The procedure is appropriate where it is clear from the outset that any alleged criminal behaviour or breach of the discipline code is one which if proved to have occurred would probably be dealt with not by criminal or formal disciplinary charges but by an informal warning or by advice; or where preliminary investigation reveals that the conduct was both lawful and reasonable.

155. The procedure is governed by the Police (Complaints) (Informal Resolution) Regulations 1985. These require that the officer appointed to attempt informal resolution (the "appointed officer") should seek the views of both the complainant and the officer against whom the complaint has been made. His task is to achieve a position in which the complainant is satisfied that his complaint has been dealt with in an appropriate manner. This will not necessarily require an apology on behalf of either the force or the officer concerned. In some instances it suffices to explain to the complainant the law or the procedures under which the officer was operating at the time of the incident which gave rise to the complaint. In yet others there may be an

irreconcilable difference in the complainant's and the officer's description of the incident, in which case it will often be sufficient for the position to be explained to the complainant and for the latter to be invited to accept that nothing further can be done. The only limit which the Regulations place on the appointed officer's freedom to approach the resolution of the complaint in the most appropriate way is the requirement that he should not render any apology on behalf of the officer concerned unless that officer has admitted the conduct complained of.

156. Where it appears to the chief officer, after attempts have been made to resolve a complaint informally, that informal resolution is impossible, or that the complaint is for any other reason not suitable for informal resolution, he must arrange for it to be formally investigated. In such cases the following applies:

(a) Mandatory referral to the PCA. Where a chief officer has decided that a complaint should be formally investigated, he will first consider whether it is necessary or desirable for reference to be made to the Police Complaints Authority for supervision of the investigation. Section 87 (1) (a) (i) of the 1984 Act requires the chief officer to refer to the Authority any complaint alleging that the conduct complained of resulted in the death of, or serious injury to, some other person. The Police (Complaints) (Mandatory Referrals, etc.) Regulations 1985 require reference to the Authority of any complaint alleging conduct which, if shown to have occurred, would constitute assault occasioning actual bodily harm; or an offence under section 1 of the Prevention of Corruption Act 1904; or a serious arrestable offence within the meaning of section 116 of the 1984 Act. Notification of the complaint must be given to the Authority within a specified time;

(b) Discretionary referral to the PCA. Section 87 (1) (b) of the 1984 Act provides that the chief officer may refer to the Authority any complaint which is not required to be referred to them. Section 87 (2) empowers the Authority to require the submission to them of any complaint not referred to them by the chief officer. Under section 88 any non-complaint matter which indicates that an officer may have committed a criminal or disciplinary offence may be referred to the Authority if it appears to the chief officer that it ought to be referred by reason of its gravity or because of exceptional circumstances;

(c) The PCA's duty. The Police Complaints Authority is required to supervise the investigation of any complaint referred to it under section 87 (1) (a) (i) of the 1984 Act and of any other complaint (or non-complaint matter referred to it under section 88) if they consider that it is desirable in the public interest to do so. If the Authority supervises an investigation, it may choose to exercise its right, under section 89 of the Act, to approve the appointment of the investigating officer;

(d) The investigating officer. Section 85 of the 1984 Act provides that the officer appointed to conduct a formal investigation should be of at least the rank of chief inspector and of at least the rank of the officer against whom the complaint is made. Moreover, under the Police (Discipline) Regulations 1985 he should be serving in a different subdivision or branch

from the officer complained against. In appropriate cases the chief officer will invite an officer from another force to conduct the investigation.

157. When the investigating officer has completed the investigation, or has taken it as far as he reasonably can, he will submit a report to the chief officer. If the investigation has been supervised by the Police Complaints Authority he will instead submit the report to the Authority and send a copy to the chief officer. At the end of an investigation which it had supervised, the Authority must issue a statement (which will be sent to the chief officer, the complainant and the officer complained against) showing whether it is satisfied with the conduct of the investigation, and specifying any respect in which it is not. If it is satisfied with the investigation, it may record its reasons for this.

158. Under section 90 (4) of the 1984 Act if a chief officer determines that an investigation report submitted to him indicates that a criminal offence may have been committed by a member of his force, and if he considers that the offence indicated is such that the officer ought to be charged with it, then he is required to send a copy of the report to the Director of Public Prosecutions. The Director will himself inform a complainant directly of his decision whether or not a police officer complained of should be prosecuted. The Director does not give reasons for his decision, but where the decision is against prosecution, the replies sent to the complainant and the chief officer will normally indicate whether he considers that the evidence is insufficient to justify criminal proceedings or that criminal proceedings are not necessarily in the public interest.

159. After any criminal aspects have been considered, the chief officer is required to submit the case to the Police Complaints Authority (together with a copy of the investigation report, where the Authority has not supervised the investigation) setting out his opinion of the complaint and giving particulars of any disciplinary charges which he has preferred or proposes to prefer or, where disciplinary charges have not been brought, his reasons for not doing so. The chief officer is not required to submit the case to the Authority for consideration where he has already preferred disciplinary charges and the officer concerned has admitted the charge and not withdrawn the admission.

160. Where the Police Complaints Authority consider that a disciplinary charge should be preferred against an officer in respect of a matter complained of which has not already been the subject of disciplinary charges, it will recommend to the chief officer the charge which it considers should be preferred, giving reasons for its recommendation. The chief officer will inform the Authority whether he accepts its recommendation and, if he does, proceed to prefer the charges. Where the chief officer disagrees with the Authority's recommendation to prefer a disciplinary charge, he may enter discussions with it but in the last resort, if mutual agreement cannot be reached, the Authority has the power to direct the chief officer to bring specified disciplinary charges.

161. Section 104 of the 1984 Act addresses itself to the issue of double jeopardy and provides that where a member of a police force has been convicted

or acquitted of a criminal offence he shall not be liable to be charged with any offence against discipline which is in substance the same as the offence of which he has been convicted or acquitted.

V. INFORMATION AND PUBLICITY

162. The Government publishes, through Her Majesty's Stationery Office, the text of United Nations human rights instruments signed by the United Kingdom. Published texts are presented to Parliament and copies are placed in the libraries of the House of Commons and House of Lords. Copies may be purchased from all good bookshops and may be borrowed from the larger lending libraries.

163. The United Kingdom's reports to the bodies established under the various United Nations human rights instruments to monitor State party compliance with treaty obligations are prepared by the Government, drawing on information and expertise from both government departments and outside sources.